IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3505 OF 2006
IN
SUIT NO.1569 OF 2004

M/s.Pince Multiplast Pvt.Ltd. ....Plaintiff
V/s.
M/s.Lebri Beverages & Ors. ....Defendants

Mr.N.K. Mudnaney for Defendant No.4 in support.
Ms.Neeta Solanki i/b Kiran Jain & Co. for the Plaintiff to show cause.

CORAM : S.J. VAZIFDAR, J.
DATED : 14TH NOVEMBER, 2006.

P.C. :

1. The Notice of Motion is taken out for setting aside an ex-parte decree dated 30.9.2004.

2. Firstly, it is submitted that the writ of summons was not served on Defendant No.4. The contention is incorrect. The writ of summons was served on Defendant No.4 who refused the service as per the Sheriff's report. There is nothing to suggest that the report is incorrect.

3. It is then contended that Defendant No.4 had retired as a partner with effect from 30.6.2001. It

is pertinent to note however that the notice to Registrar of Firms of the alleged retirement was given on 21.9.2006 i.e. after the attachment levied in execution of the decree on 18.9.2006. In any event the question whether Defendant No.4 was a partner is a mixed question of fact and law. The Defendant having failed to appear, the question could obviously have not been gone into.

4. In the circumstances, the Notice of Motion is dismissed. Defendant No.4 shall pay the costs of this Notice of Motion fixed at Rs.5000/- within four weeks from today.